IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1290 of 1983

with

SPECIAL CIVIL APPLICTIONS NOS.1936/84, 1937/84, 4515/84, 6093/85, 3639/86, 6923/88, 6759/89, 6126/90, 5656/90, 7292/90, 720/91, 1144/91, 1145/91, 1148/91, 1149/91, 2244/89, 2026/84, 1486/79, 1792/86, 2298/90, 1098/83, 1258/83, 1291/83, 1883/83, 3209/83, 1290A/83

with

CIVIL APPLICATIONS No.1400/88 and 94/99

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

KHACHAR GODADBHAI PITHUBHAI & OTHERS

Versus

THE STATE OF GUJARAT

Appearance:

Messrs JR NANAVATI, PV HATHI, SV PARMAR,

KG VAKHARIA, BJ JADEJA, AKIL KURESHI, SURESH M SHAH and MEHUL S SHAH, Advocates for Petitioners.
MS MANISHA LAVKUMAR AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 17/02/2004

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

1. These petitions arising from operation of the Gujarat Agricultural Lands Ceiling Act, 1960 ('the Act' for short) challenge the orders declaring "bid" lands held by Girasdar to be surplus lands and the revisional orders confirming them. The challenge against such acquisition of large tracts of bid lands as surplus lands was mounted mainly on the twin grounds of the Act being not applicable to bid lands and the relevant provisions being ultra vires the Constitution. Since all the matters were argued together on these common grounds, they are disposed by this common judgment although the relevant facts of only Special Civil Application No.1290 of 1983 were canvassed and are considered as typical for the purpose of deciding the issues.

2. In order to appreciate the facts and contentions, reference to the relevant provisions and historical background of holding of the bid lands by Girasdars would be necessary. The petitioners are Girasdars recognized as such in the erstwhile State of Saurashtra when the Act to provide for certain land reforms in Saurashtra in the form of Saurashtra Land Reforms Act, 1951 was enacted with the avowed object, inter alia, of putting an end to girasdari system and extinguishment of their rights. "Land" for the purpose of that Act meant "any agricultural land, bid land, or cultivable waste". By section 4 of that Act, all girasdari lands were declared to be liable to payment of land revenue to the State. Besides improving the land revenue administration and regulating the relationship between Girasdars and their tenants, that Act provided for allotment of land to Girasdar for personal cultivation and, for that purpose, priority was required to be given to allotment of such of the bid lands or cultivable waste of the estate as the girasdar would wish to utilize for himself. The word "estate" was defined to mean land of whatever description or undivided share thereof held by a girasdar and it

included uncultivable waste, whether such land was used for the purpose of agriculture or not. And, "bid land" was defined to mean such land as was used by a girasdar for grazing his cattle or for cutting grass for the use of his cattle.

2.1 An Act to provide for acquisition of certain estates of girasdars was enacted in 1952 in the form of the Saurashtra Estates Acquisition Act, 1952, under which, "bid land" meant such land as on 17th April, 1951 was specifically reserved and was being used by a girasdar for grazing cattle or for cutting grass. That Act empowered the Government to declare, by notification in the Official Gazette, that with effect from such date as may be specified, all the rights, title and interest of girasdars shall, in respect of any estate or part of an estate comprised in the notification, cease and be vested in the State of Gujarat. For the purpose of that Act, "estate" meant all land of whatever description or undivided share thereof held by a girasdar. Section 5 of that Act, however, provided as under:

"Sec.5 (1) : Notwithstanding anything contained in section 3, or section 4-

(a) no bid land which is also uncultivable waste, wadas and kodias shall vest in, and be the property of the State of Gujarat;

(b) no bid land comprised in the estate of a girasdar who is considered to be of B and C class for the purpose of making rehabilitation grant under the Saurashtra Land Reforms Act, 1951, or of a Barkhalidar, the total area of agricultural land comprised in whose estate does not exceed eight hundred acres, shall vest in and be the property of the State of Gujarat; and

(c) no bid land which is also cultivable waste or no village site land shall be acquired unless it is in excess of the requirements of the girasdar or barkhalidar in accordance with the rules to be made in this behalf; and

(d) in the case of girasdari majmu villages, one fourth of the total area of bid land in the village shall not be acquired.

(2) If any bid land or village site land is not acquired under the provisions of sub-section (1) and such bid land or village site land is used by the girasdar or barkhalidar for a different purpose, it shall be liable to be acquired under the provision of section 4."

2.2 After operation of the aforesaid two relevant legislations, the petitioner girasdars holding large tracts of bid lands were required to furnish the particulars of land held by them to the mamlatdar under the provisions of section 10 of the Gujarat Agricultural Lands Ceiling Act, 1960 as amended by the Gujarat Act (2 of 1974) (the 'Act'). That Act was enacted with the express object, inter alia, of making provisions in respect of restrictions upon holding agricultural land in excess of certain limits and acquisition of such surplus agricultural land for allotment thereof to persons in need of them. The relevant part of the charging section prescribing ceiling on holding of land is incorporated in section 6 in the following terms:

"6 (1): Notwithstanding anything contained in any law for the time being in force or in any agreement, usage or decree or order of a Court, with effect from the appointed day, no person shall, subject to the provisions of sub-sections (2), (3), (3A) and (3B) be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area.

(2) xxx xxx xxx
(3) xxx xxx xxx"

2.3 Section 12 of the Act provides that all surplus lands shall be deemed to be needed for a public purpose and may be acquired by the State Government in accordance with the provisions of the Act. Section 23 of the Act provides for determining the quantum of compensation for the land vesting in the State Government, generally, according to the class of the local area in which the land is situate. It is specifically provided in sub-clause (c) of sub-section (1) of section 23 that, where the land to which sub-clause (b) applies has not been cultivated for a continuous period of three years immediately preceding the specified date, an amount equal to 25% of the amount arrived at in respect thereof under sub-clause (b) shall be payable.

2.4 The issue raised in the petitions is as to whether bid land held by the petitioners could have been declared as surplus land under the Agricultural Lands Ceiling Act, 1960 as amended in 1974. Therefore, it would be necessary to refer to the relevant parts of the following definitions given in the Act.

"Sec.2: In this Act, unless the context requires otherwise-

(1) "agriculture" includes-

(a) horticulture,

(b) raising or crops, grass or garden produce,

(c) the use by an agriculturist of the land held by him or part thereof for grazing.

(d) the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rabmanure,

(e) dairy farming,

(f) poultry farming,

(g) breeding of live-stock, and

(h) cutting of wood:

Provided that in relation to any period prior to the specified date, "agriculture" shall not include any of the pursuits specified in sub-clauses (d), (e), (f), (g) and (h) and also such other pursuits as may have been prescribed prior to the specified date as pursuits not included in that word;

(2) xxx xxx xxx

(3) "agriculturist" means a person who cultivates land personally.

(4) xxx xxx xxx

(5) "ceiling area" means the extent of land

determined under section 5 to be the ceiling area.

(6) "class of land" means any of the following classes of land, that is to say-

(i) perennially irrigated land;
(ii) seasonally irrigated land;
(iii) superior dry crop land;
(iv) dry crop land.

Explanation 1. For the purpose of this Act-

(a) "Perennially irrigated land" means land which is assured of a regular and actual supply of water for a period of not less than ten months during the year from any source of irrigation and which is consequently capable of growing at least two crops in a year or is utilised for growing sugarcane crop;

Provided that land irrigated by a tube-well or lift irrigation from a perennial source of water, operated by diesel or electric power or both and constructed on or after 15th August, 1972 by any person other than Government or local authority, shall not be deemed to be perennially irrigated land;

(b) "seasonally irrigated land" means land which is assured of a regular and actual supply of water for a period of less than ten months but not less than four months during the period from 15th September to the end of February in a year from any source of irrigation, and is consequently capable of growing at least one crop in a year;

(c) "Superior dry crop land" means rice land and orchard;

(d) "rice land" means land which is situated in a local area where the average rainfall is not less than 89 centimetres a year, such average being calculated on the basis of rain-fall in that area during the five years immediately preceding the year 1959 and which is used

for the cultivation of rice or which, in the opinion of the State Government, is fit for the cultivation of rice but does not include perennially or seasonally irrigated land used for the cultivation of rice;

(e) "dry crop land" means land other than the land specified in paragraphs (a) to (c) and grass land, that is to say, land which abounds in grass grown naturally and which is capable of being used for agricultural purposes;

(f) "grass land" referred to in paragraph (e) shall, notwithstanding anything contained in that paragraph, be deemed to be rice land if it is situated in a local area referred to in paragraph (d) and in the opinion of the State Government it is fit for the cultivation of rice;

... ...
... ...

(11) "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery or to carry on any agricultural operation thereon;

Explanation:- A person who enters into a contract only to cut grass or to gather the fruits or other produce of tress, on any land, shall not on that account only, be deemed to cultivate such land;

(17) "land" means-

(i) in relation to any period prior to the specified date, land which is used or capable of being used for agricultural purpose and includes the sites of farm buildings appurtenant to such land;

(ii) in relation to any other period, land which is used or capable of being used for agricultural purposes, and includes-

(a) xxx xxx xxx

(b) the lands on which grass grows naturally;

(c) the bid lands held by the girasdars or barkhalidars under the Saurashtra Land Reforms Act, 1951, the Saurashtra Barkhali Abolition Act, 1951 or the Saurashtra Estates Acquisition Act, 1952, as the case may be;

(d) xxx xxx xxx
(e) xxx xxx xxx
(f) xxx xxx xxx
(g) xxx xxx xxx

... ...

(28) "surplus land" means land which is deemed to be or declared to be surplus land under the provisions of this Act."

2.5 Under the scheme of Sections 4 and 5 of the Act, the State is divided into classes of local areas as specified in Schedule I and different ceiling area is prescribed for different classes of land in different classes of local areas. Schedule II specifies local areas which would fall in particular class of local area. Thus, a composite scheme is evolved to see that the ceiling limit was higher or lower according to the class of land. In other words, appraisal of land would, for the purpose of determining its ceiling area, be on two parameters, viz. class of local area and class of land. Specific provisions are made in section 5 to increase the ceiling area in respect of lands situate in desert, hill areas or drought prone areas while including them in "dry crop land" even as the overall ceiling of 21.85 hectres is maintained. Under the provisions of section 6, no person shall be entitled to hold land in excess of the limit prescribed by way of 'ceiling area'.

3. In the facts of the present cases, the bid lands held by Girasdars were held to be "land" within the meaning and definition of section 2 (17) and, therefore, liable to acquisition upon being declared to be surplus land. It is the case of the petitioners that the holding of bid lands by girasdars had survived all the three land reform legislations, including the Gujarat Agricultural

Lands Ceiling Act, 1960 before its amendment in 1974. It was by the Gujarat Agricultural Lands Ceiling Amendment Act, 1974 that the definition of "land" in section 2 (17) was substituted and bid lands held by Girasdars under the Saurashtra Land Reforms Act, 1951 and the Saurashtra Estates Acquisition Act, 1952 were specifically included in the definition. It was submitted that even though such bid lands held by girasdars were included in the definition of "land", it cannot fall within the definition of "dry crop land" because only grass land which abounds in grass grown naturally and which is capable of being used for agricultural purpose can, by definition, be included in the "dry crop land". And, if the bid land held by the petitioners was not "dry crop land", it cannot fall in any of the classes of land as defined in section 2 (6) and, therefore, cannot be considered for the ceiling area prescribed under section 6 of the Act, according to the submission. Elaborating this argument, the learned counsel submitted that Girasdars were holding bid lands, which included cultivable waste and uncultivable waste, where grass did not naturally grow in abundance. Such rocky and stony lands cannot by any stretch be treated as agricultural land in respect of which restrictions on holding were envisaged by the Act. Thus, the attempt was to canvass that the bid lands held by Girasdars cannot be deemed or declared to be "surplus land" under the provisions of the Act. The judgment of the Supreme Court in COMMISSIONER OF INCOME TAX, WEST BENGAL vs. BENOY KUMAR SAHAS ROY [AIR 1957 SC 768] was relied upon to submit that the mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term "agriculture" is unwarranted. The term "agriculture" cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The learned counsel also relied upon the judgment in SHAMBUSING DHANSING JADHAVRAO v. STATE OF MAHARASHTRA [AIR 1981 Bombay 331] in which, in the context of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, it was held that, if land was not used for agriculture, or was not capable of being used for agriculture, the land must be left out of calculation. It is also observed therein that if land is incapable of being used for agriculture, the mere circumstance of a future possibility that it can be brought under

cultivation or its capability of being used at some distant future for agricultural purpose would be of no avail. Similarly, the judgment in SUBHASH v. STATE OF MAHARASHTRA [AIR 1981 Bombay 382] was cited in support of the submission that merely because some patches of grass grew here and there, it would be difficult to call the land to be not rocky and barren. ".....The primary intention of the Act was to place a ceiling upon agricultural lands which can be held by a person and to distribute such excess lands and to acquire them through the State for distribution amongst the persons contemplated under the Act.....The definition, therefore, of the word "land" which includes land on which grass grows naturally must be so construed and interpreted as to mean that the bulk of the land and most of the land which comes under that description are such lands which can be used ultimately for agricultural purposes, and not lands where grass grows here and there but are otherwise entirely rocky and barren."

4. Examining in the present cases the type of bid lands held by Girasdars in light of the successive land reforms legislations in respect thereof, it would appear that bid lands were given consistent and distinct meaning of the lands used by girasdars for grazing cattle or cutting grass. Such lands were excluded from acquisition under section 5 of the Saurashtra Estates Acquisition Act, 1952 if the lands were also uncultivable waste or were cultivable waste but not in excess of the requirements of the Girasdar. Accordingly, bid lands could be cultivable or uncultivable waste, but it would at the same time be necessarily the land chosen (under the Saurashtra Land Reforms Act, 1951) and used by Girasdars for grazing their cattle or cutting grass. If the bid land allowed to be retained by the girasdar were to be put to any other use, it was liable to be acquired under the provisions of sub-section (2) of section 5 of the Saurashtra Estates Acquisition Act, 1952. In that view of the matter, it was irrelevant, and futile for the petitioners to contend at this stage, that such bid lands were mostly rocky, barren or uncultivable waste which could not be put to any agricultural use. In any case, "agriculture" is defined in section 2 (1) to include the use by an agriculturist of the land held by him or part thereof for grazing or breeding of livestock. "Agriculturist", as defined in section 2 (3), means a person who cultivates land personally. And, as defined in section 2 (11) "to cultivate", with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by

means of cattle or machinery or to carry on any agricultural operation thereon. Thus, carrying on of any agricultural operations which would include use by an agriculturist of the land for grazing or breeding of livestock amounts to cultivation. Therefore, bid lands in question are, not only expressly included in the definition of land, but its use by the girasdar is also agriculture and the lands were accordingly agricultural land within the meaning and for the purpose of the Act.

4.1 In defining the classes of land in clause (6) of section 2, "dry crop land" is defined to mean land other than the land specified in paragraphs (a) to (c), which clauses define "perennially irrigated land", "seasonally irrigated land" and "superior dry crop land". Thus, all lands other than the above three classes of lands are deemed to be "dry crop land" falling in sub-clause (e). It is true that in sub-clause (e) of clause (6), grass land is also mentioned and defined to mean land which abounds in grass grown naturally and which is capable of being used for agricultural purpose. However, the land which is, strictly speaking, not "grass land" is also covered by the residuary part of the definition of "dry crop land". "Grass land" appears to have been included in the definition of "dry crop land" and also defined separately as "grass land" in sub-clause (f) in order to provide for the deeming provision under which grass land would be deemed to be "rice land" for the purpose of classification. That, however, does not derogate from the proposition that bid lands were included as such and not as grassland in the definition of "dry crop land" in sub-clause (e) of clause (6) of section 2 of the Act. It is clear that Section 2 (6) only defines the classes of land relevant for the purpose of prescribing particular ceiling area for particular type of land in particular local area and cannot control the charging section.

4.2 The "ceiling area" limits under the provisions of the charging Section 6 of the Act are applied to "land" as defined in Section 2 (17) and not to any particular class of land. And, "land" is defined to specifically include bid lands held by girasdars under the Saurashtra Land Reforms Act, 1951 or the Saurashtra Estates Acquisition Act, 1952. Thus, the intention of the Legislature is absolutely clear about covering bid lands held by Girasdars in the matter of imposing ceiling upon holding of land. The argument to the effect that, in defining ceiling area under the provisions of sections 4 and 5 of the Act, bid lands had to be disregarded as not falling in any of the classes of land as defined in section 2 (6) and, therefore, ceiling area restrictions

under section 6 of the Act cannot be applied to such land has, therefore, to be negatived.

5. Challenging the constitutional validity of the Act, more particularly the Gujarat Agricultural Lands Ceiling Amendment Act, 1974, it was contended on behalf of the petitioners that inclusion of bid lands in the definition of "land" in clause (17) of section 2 of the Act was violative of Article 14 of the Constitution and it subjected the girasdars to a hostile discrimination in the matter of holding of agricultural land by them visa-vis other similarly situated persons. It was submitted that, even though the lands on which grass grew naturally were included in the definition of "land", the bid land already held by girasdars were included without reference to its use, yield, fertility or cultivability. Thus, the bid lands on which grass did not grow naturally and were rocky, stony or barren, were being treated as "land" if they were bid lands held by girasdars and that violated the most important constitutional guarantee of equality before law, argued the learned counsel. In view of the fact that the Amendment Act of 1974 was included in Schedule IX of the Constitution, it was submitted that the Constitution (34th Amendment) Act by which the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1974 was included in the IXth Schedule was open to challenge. Relying upon the judgments of the Supreme Court in MINERVA MILLS LTD. v. UNION OF INDIA [AIR 1980 SC 1789] and WAMAN RAO vs. UNION OF INDIA [AIR 1981 SC 271], it was submitted that the Acts included in Schedule IX after 24.4.1973 have to satisfy the test of not damaging the basic structure and the essential features of the Constitution. It was contended that violation of Article 14 by such Amendment Act amounted to damaging the basic structure of the Constitution.

5.1 The learned Advocate General countered the above contentions with the submission that challenge to the validity of the Act was not maintainable since the said Ceiling Act of 1960 as also the Amendment Act of 1974 were included in the IXth Schedule and, besides being under the protective umbrellas of Article 31-B, they were saved also by Articles 31-A and 31-C.

5.2 In SASANKA SEKHAR MAITY v. UNION OF INDIA [AIR 1981 SC 522], wherein W.B.Land Reforms Act, 1956 and amendment thereto fixing ceiling on agricultural holdings were under challenge, it was observed that the Act was a piece of social legislation for agrarian reform. The object of the legislation is to break up the concentration of ownership and control of the material

resources of the community and to so distribute the same as best to subserve the common good, as enjoined by Article 39 (b) ..... In order to reconcile the fundamental rights of the community as a whole with the individual rights of the more fortunate section of the community, it was fundamentally necessary to make the impugned legislation to secure to a certain extent the rights of that part of the community which is denied its legitimate share in the means of livelihood.

5.3 In WAMAN RAO (supra), the Constitution Bench judgment of the Supreme Court, on which reliance was placed on behalf of the petitioners, while upholding the validity of the Maharashtra Agricultural Lands Ceiling Act, it is held as under:

> "64. .....We do not pronounce upon the validity of such subsequent constitutional amendments except to say that if any Act or regulation included in the 9th Schedule by a constitutional amendment made on or after April 24, 1973 is saved by Article 31-A, or by Article 31-C as it stood prior to its amendment by the 42nd Amendment, the challenge to the validity of the relevant Constitutional Amendment by which that Act or Regulation is put in the 9th Schedule, on the ground that the Amendment damages or destroys a basic or essential feature of the Constitution or its basic structure as reflected in Article 14, 19 or 31, will become otiose....."

5.4 In view of the subject, object and the scheme of the impugned Amendment Act, it clearly is a law providing for acquisition of estate by the State with concomitant extinguishment of rights in the estate, which includes agricultural land, waste land or land for pasture and, being covered by Article 31-A, the challenge based on violation of Article 14 or 19 is not available. The impugned Act is also covered by Article 31-C and, for the purpose of both the Articles, the assent of the President has also been found to have been received. This was verified from the record of the Government, which was called for in view of the contention sought to be raised during the arguments doubting the existence of the Presidential assent and it was verified in Court that the assent of the Honourable President was accorded after it being sought specifically in the context of and for the purpose of Articles 31-A and 31-C. Thus, the impugned Act and the relevant provisions thereof are not only immune from any challenge under the provisions of Article

31-B but, in view of the protective umbrellas of Articles 31-A and 31-C being also available to the Gujarat Agricultural Lands Ceiling Act, 1960 and the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1974, the challenge of the petitioners against constitutional validity of the provisions of the impugned Act fails even on that count. All the petitions are, therefore, required to be rejected.

6. Accordingly, Special Civil Applications Nos.1290/83, 1936/84, 1937/84, 4515/84, 6923/85, 6759/89, 6126/90, 5656/90, 7292/90, 720/91, 1144/91, 1145/91, 1148/91, 1149/91, 2244/89, 2026/84, 1792/86, 2298/90, 1098/83, 1258/83, 1291/83, 1883/83, 3209/83 and 1290A/83 are rejected. Special Civil Applications Nos.6093/85 and 3639/86 do not survive. Civil Applications Nos.94/99 and 1400/88 also do not survive in view of the aforesaid order in the main petitions. They accordingly stand rejected. Rule is discharged in each of them with no order as to costs. Interim relief stands vacated in all the matters.

7. As regards Special Civil Application No.1486 of 1979, there was a consensus to the effect that, subject to the observations made in this judgment, the matter was required to be remanded to the Mamlatdar for the purpose of deciding the question of adoption in accordance with law. Accordingly, Special Civil Application No.1486 of 1979 stands partly allowed to the extent that the matter is remanded for reconsideration by the Mamlatdar, Rajkot in original Ceiling Case No.223 of 1976 on the question of adoption, which question will be decided after giving an opportunity of hearing to the parties concerned. Rule is made absoslute accordingly with no order as to costs.

8. The learned counsel for the petitioners at the stage of pronouncement of judgment requested to extend the stay which was operating in some of the petitions with a view to approaching the higher forum. We do not find any justification for extending the stay. Therefore, the request is declined.

Sd/-

(R.K.Abichandani,J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)